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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 DEREK GRIFFITHS, an individual, on  
behalf of himself and all others  
similarly situated; JIM TOWERY, an  
individual, on behalf of himself and all  
similarly situated; MAARTEN  
VERHOEVEN, an individual, on behalf  
of himself and all similarly situated;  
PATRICIA COTTINGTON, an  
individual, on behalf of herself and all  
similarly situated; RYAN  
CALDERON, an individual, on behalf  
of himself and all similarly situated,  
24  
Plaintiffs,

25 vs.  
26 LUMBER LIQUIDATORS, INC., a  
Delaware corporation,  
28 Defendant.

Case No. 2:15-cv-1783

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

1. **Violations of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.);**
2. **Violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500);**
3. **Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750);**
4. **Fraudulent Concealment; and**
5. **Breach of Implied Warranty.**

**DEMAND FOR A JURY TRIAL**

1 Plaintiffs DEREK GRIFFITHS, JIM TOWERY, MAARTEN VERHOEVEN,  
 2 PATRICIA COTTINGTON and RYAN CALDERON (collectively, "Plaintiffs"), by  
 3 and through their attorneys, bring this action on behalf of themselves and all others  
 4 similarly situated against Defendant LUMBER LIQUIDATORS, INC.  
 5 ("Defendant"). Plaintiffs hereby allege, on information and belief, except as to  
 6 those allegations that pertain to the named Plaintiffs, which allegations are based on  
 7 personal knowledge, as follows:

8 **INTRODUCTION**

9 1. Since 1988, the State of California has recognized that formaldehyde  
 10 gas is a chemical known to cause cancer. By 1992, the California Air Resources  
 11 Board ("CARB") had formally listed formaldehyde as a contaminant with no safe  
 12 level of exposure.

13 2. Certain building materials, including laminate flooring, are processed  
 14 in a way that introduces formaldehyde into the material during manufacturing. In  
 15 response, the CARB has passed regulations limiting the amount of formaldehyde  
 16 that may be present. Specifically, the California Code of Regulations, title 17,  
 17 (which addresses public health), sections 93120 through 93120.12 are known as the  
 18 Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from  
 19 Composite Wood Products ("CARB Regulations"). The regulations apply to  
 20 anyone who manufacturers, distributes, imports, sells, or supplies the designated  
 21 materials in California.

22 3. Defendant is a corporation that distributes, markets, and/or sells  
 23 laminate wood flooring products in California that are subject to 17 California Code  
 24 of Regulations sections 93120 through 93120.12.

25 4. Defendant supervises and controls the manufacturing of its laminate  
 26 wood flooring that takes place in China. Laminate wood flooring consists of a core  
 27 of pressed wood [commonly referred to as medium-duty fiberboard ("MDF")],  
 28 which is made up of wood particles bonded together with glue or resin, a high

1 quality photographic image of wood, and a scratch resistant coating. On  
2 information and belief, urea-formaldehyde resin is used to bond the wood particles  
3 together in the MDF core of laminate flooring.

4 5. For at least the last two years, certain laminate wood flooring  
5 (“Formaldehyde Flooring”) manufactured, distributed, sold, and/or controlled by  
6 Defendant has contained formaldehyde in excess of the levels allowed under the  
7 CARB Regulations (“Design Defect”). On information and belief, Plaintiffs allege  
8 that Defendant’s Formaldehyde Flooring, includes, but may not be limited to, the  
9 following products:

- 10 a. 8 mm Bristol County Cherry Laminate Flooring;
- 11 b. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- 12 c. 8 mm Dream Home Nirvana Royal Mahogany Laminate  
Flooring;
- 13 d. 12 mm Dream Home Ispiri America's Mission Olive Laminate  
Flooring;
- 14 e. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak  
Laminate Flooring;
- 15 f. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate  
Flooring;
- 16 g. 12 mm Dream Home Kensington Manor Antique Bamboo  
Laminate Flooring;
- 17 h. 12 mm Dream Home Kensington Manor Cape Doctor Laminate  
Flooring;
- 18 i. 12 mm Dream Home Kensington Manor Fumed African  
Ironwood Laminate Flooring;
- 19 j. 12 mm Dream Home Kensington Manor Glacier Peak Poplar  
Laminate Flooring;
- 20 k. 12 mm Dream Home Kensington Manor Golden Teak Laminate

- 1 Flooring;

2 l. 12 mm Dream Home Kensington Manor Handscraped Imperial

3 Teak Laminate Flooring (SKU 10029601);

4 m. 12 mm Dream Home Kensington Manor Handscraped Imperial

5 Teak Laminate Flooring (SKU 10023958);

6 n. 12 mm Dream Home Kensington Manor Handscraped Summer

7 Retreat Teak Laminate Flooring;

8 o. 12 mm Dream Home Kensington Manor Sandy Hills Hickory

9 Laminate Flooring;

10 p. 12 mm Dream Home Kensington Manor Tanzanian Wenge

11 Laminate Flooring;

12 q. 12 mm Dream Home Kensington Manor Warm Springs Chestnut

13 Laminate Flooring;

14 r. 12 mm Dream Home St. James African Mahogany Laminate

15 Flooring;

16 s. 12 mm Dream Home St. James Blacksburg Barn Board Laminate

17 Flooring;

18 t. 12 mm Dream Home St. James Brazilian Koa Laminate

19 Flooring;

20 u. 12 mm Dream Home St. James Chimney Rock Charcoal

21 Laminate Flooring;

22 v. 12 mm Dream Home St. James Cumberland Mountain Oak

23 Laminate Flooring;

24 w. 12 mm Dream Home St. James Golden Acacia Laminate

25 Flooring;

26 x. 12 mm Dream Home St. James Nantucket Beech Laminate

27 Flooring;

28 y. 12 mm Dream Home St. James Oceanside Plank Bamboo

### Laminate Flooring;

z. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring; and

aa. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring.

## bb. Morning Star Bamboo Flooring

6. Defendant supervises and/or controls the manufacturing and packaging of Formaldehyde Flooring in China that Defendant then distributes, markets, and/or sells in California.

10       7. Plaintiffs bring this class action on behalf of themselves and all others  
11 similarly situated, asserting claims under California’s Unfair Competition Law, Cal.  
12 Bus. & Prof. Code § 17200, et seq. (“UCL” or “§17200”); the Consumer Legal  
13 Remedies Act, Cal. Civ. Code § 1750, et seq. (“CLRA”); False Advertising in  
14 Violation of Cal. Bus & Prof. Code § 17500, et seq.; fraudulent concealment; and  
15 breach of implied warranty. Plaintiffs seek damages and equitable relief on behalf  
16 of the Class, which relief includes but is not limited to the following: providing class  
17 members with safe laminate wood flooring products, or if no such product exists, to  
18 refund Plaintiffs and class members the full amount paid for Formaldehyde Flooring  
19 and the cost to remove the Formaldehyde Flooring; costs and expenses, including  
20 attorneys’ fees and expert fees; injunctive relief and declaratory relief; and any  
21 additional relief that this Court determines to be necessary to provide complete relief  
22 to Plaintiffs and the Class.

## PARTIES

8. Plaintiff Derek Griffiths resides in Northridge, California.

9. Plaintiff Jim Towery resides in Indian Wells, California.

10. Plaintiff Maarten Verhoeven resides in San Luis Obispo, California.

11. Plaintiff Patricia Cottington resides in Fresno, California.

12. Plaintiff Ryan Calderon resides in Ladera Ranch, California.

1       13. Plaintiffs purchased Formaldehyde Flooring believing it to be  
2 reasonably safe to use for the purpose for which they were intended.

3        14. Defendant Lumber Liquidators, Inc. is a Delaware corporation with its  
4 headquarters and principal place of business in Toano, Virginia. Defendant  
5 conducts substantial business in the State of California and in the County of Los  
6 Angeles.

## **JURISDICTION AND VENUE**

8        15. This Court has subject matter jurisdiction over this action under the  
9 Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2) (“CAFA”), in that the  
10 matter is a class action wherein the amount in controversy exceeds the sum or value  
11 of \$5,000,000, exclusive of interest and costs, and members of the Class are citizens  
12 of a state different from the Defendant.

13        16. This Court has personal jurisdiction over the parties in this action by  
14 the fact that Defendant is a corporation that is authorized to conduct business in  
15 California and it has intentionally availed itself of the laws and markets of  
16 California through the promotion, marketing, distribution and sale of its laminate  
17 wood flooring products. Each named Plaintiff purchased their Formaldehyde  
18 Flooring in California.

17. Venue is proper in this District pursuant to 28 U.S.C. §1391(b),  
because a substantial part of the events or omissions giving rise to Plaintiffs' claims  
occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because  
Defendant transacts a substantial amount of its business in this District. Plaintiffs  
are filing concurrently herewith an affidavit stating facts showing that this action has  
been commenced in a proper county pursuant to California Civil Code section  
1780(c).

26 | / / /

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**1**

## FACTUAL ALLEGATIONS

**2**       18. On or about November, 23, 2014, Plaintiff DEREK GRIFFITHS  
**3** purchased St. James 12mm Burnet Road Russet laminate flooring from a Lumber  
**4** Liquidators' store located at 16735 Roscoe Boulevard, North Hills, California. The  
**5** label on the packaging read, inter alia: "CARB CALIFORNIA 93120 PHASE 2  
**6** Compliant for Formaldehyde."

**7**       19. On or about August 25, 2013, Plaintiff JIM TOWERY purchased  
**8** Morning Star ½" x 5" Strand Natural Click Bamboo flooring from Lumber  
**9** Liquidators' Palm Desert Store No. 174 for a total purchase price of \$4,008.82.  
**10** Further, JIM TOWERY paid a professional the sum of \$2,338.30 to install this  
**11** flooring. The label on the packaging read, inter alia: "CARB NO. SCS-09-0015 [¶]  
**12** CALIFORNIA 93120 PHASE 2 Compliant for Formaldehyde".

**13**       20. On or about October 13, 2014, Plaintiff MAARTEN VERHOEVEN  
**14** purchased Kensington Manor Sandy Hills Hickory 12mm laminate flooring from  
**15** Lumber Liquidators' San Luis Obispo Store No. 194, located at 170 Suburban Road,  
**16** Suite 130, San Luis Obispo, California for the purchase price of \$1,265.01. The  
**17** label on the packaging read, inter alia: "CARB CALIFORNIA 93120 PHASE 2  
**18** Compliant for Formaldehyde".

**19**       21. On or about August 9, 2014, Plaintiff PATRICIA COTTINGTON  
**20** purchased Kensington Manor Warm Springs Chestnut 12mm laminate flooring from  
**21** the Lumber Liquidators' store located at 2955 S. Orange, Fresno, California for a  
**22** purchase price of \$1,440. The label on the packaging read, inter alia, "CARB No.  
**23** SCS-CARB-000090, California 93120 Phase 2 Compliant for Formaldehyde."

**24**       22. On or about July 2012, Plaintiff RYAN CALDERON purchased  
**25** Kensington Manor Imperial Teak 12mm laminate flooring from Lumber  
**26** Liquidators' Santa Ana store. The label on the packaging read, inter alia, "CARB  
**27** No. SCS-09-0015, California 93120 PHASE 2 Compliant for Formaldehyde."

**28**       ///

1           23. Despite the fact that the Formaldehyde Flooring fails to meet  
2 California's requirements for formaldehyde emissions, Defendant has made  
3 numerous representations to the contrary.

4           24. Defendant's website leads consumers to believe that its laminate wood  
5 flooring products comply with the CARB formaldehyde standards when they do not.  
6 The website states as follows:

7           Is Lumber Liquidators Compliant with the California law?

8           **Laminate and engineered flooring products sold by Lumber Liquidators  
9 are purchased from mills whose production method has been certified by  
10 a Third Party Certifier approved by the State of California to meet the  
11 CARB standards.** The scope of the certification by the Third Party Certifier  
12 includes the confirmation that the manufacturer has implemented the quality  
13 systems, process controls, and testing procedures outlined by CARB and that  
14 their products conform to the specified regulation limits. The Third Party  
15 Certifier also provides ongoing oversight to validate the manufacturers'  
16 compliance and manufacturers must be periodically re-certified.

17           Does CARB only apply to California?

18           Though it currently applies only to products sold in California, **Lumber  
19 Liquidators made a decision to require all of our vendors to comply with  
20 the California Air Resources Board regulations regardless of whether we  
21 intended** to sell the products in California or any other state/country.

22           What extra steps does Lumber Liquidators take to ensure compliance?

23           In addition to the California Air Resources Board requirements, Lumber  
24 Liquidators regularly selects one or more finished products from each of its  
25 suppliers and submits them for independent third-party lab testing. This is  
26 done as a monitoring activity to validate ongoing quality control.

27           25. After the dangerous formaldehyde levels in Lumber Liquidators'  
28 products was featured on the CBS News program "60 Minutes," Lumber

1 Liquidators responded by posting a letter from its Chairman on its website stating:

2       Let me make one thing very clear – our laminate products, all of our products,  
3       are 100% safe.

4       ...

5       We comply with applicable regulations regarding our products, including  
6       California standards for formaldehyde emissions for composite wood  
7       products – the most stringent rules in the country. We take our commitment to  
8       safety even further by employing compliance personnel around the world and  
9       utilizing the latest in cutting- edge technology to provide our customers with  
10      top quality and high value flooring.

11      26. Moreover, the product packaging for Defendant's laminate wood  
12      flooring states: "CARB . . . CALIFORNIA 93120 Phase 2 Compliant for  
13      Formaldehyde." On information and belief, this statement is presented on all of  
14      Defendant's laminate flooring product packaging regardless of whether the flooring  
15      inside the packaging complies with the CARB standards.

16      27. On information and belief, at all times relevant to this action,  
17      Defendant has knowingly misrepresented its laminate wood flooring products as  
18      CARB compliant and knowingly failed to disclose to consumers the unlawful levels  
19      of formaldehyde emissions from its laminate wood flooring products

20      28. Plaintiffs did not discover, nor would a reasonable consumer have had  
21      reason to suspect that Defendant knowingly misrepresented its laminate wood  
22      flooring products as CARB compliant and knowingly failed to disclose to  
23      consumers the unlawful levels of formaldehyde emissions from its laminate wood  
24      flooring products until March 1, 2015, when the "60 Minutes" report publicized it.

25      29. Plaintiffs have suffered injury in fact and loss of money or property.  
26      They have been damaged in the amount they paid for Formaldehyde Flooring.  
27      Moreover, if no safe replacement laminate wood flooring product exists, Plaintiffs  
28      have suffered damages in the amount of the full price they paid for Formaldehyde

1 Flooring and the cost to remove Formaldehyde Flooring and installation for  
2 replacement flooring. In the event safe replacement laminate wood flooring exists,  
3 Plaintiffs' damages are the cost of replacing the defective Formaldehyde Flooring  
4 with safe laminate wood flooring.

5 **CLASS ALLEGATIONS**

6 30. This action may properly be maintained as a class action pursuant to  
7 Federal Rules of Civil Procedure Rule 23. The Class is sufficiently numerous, since  
8 it is estimated to include tens of thousands of consumers throughout California, the  
9 joinder of whom in one action is impracticable, and the disposition of whose claims  
10 in a class action will provide substantial benefits to the parties and the Court.

11 31. Class Definition: Without prejudice to later revisions, the Class which  
12 Plaintiffs seeks to represent is composed of: all consumers who purchased  
13 Formaldehyde Flooring in California from the time of their introduction in the  
14 marketplace through and including the date of class notice (the "Class"). Excluded  
15 from the Class are Defendant, its affiliates, employees, officers and directors,  
16 persons or entities that distribute or sell Formaldehyde Flooring, the Judge(s)  
17 assigned to this case, and the attorneys of record in this case.

18 32. Throughout discovery in this litigation, Plaintiffs may find it  
19 appropriate and/or necessary to amend the definition of the Class. Plaintiffs reserve  
20 the right to amend the Class definitions if discovery and further investigation reveal  
21 that the Class should be expanded or otherwise modified.

22 33. Ascertainable Class: While Plaintiffs do not know the exact number  
23 and identity of all class members, Plaintiffs are informed and believe that there are  
24 tens, if not hundreds, of thousands of class members. The precise number of  
25 members can be ascertained through discovery, which will include Defendant's  
26 sales, service and other business records.

27 34. Common Questions of Law and Fact Predominate: There is a well-  
28 defined community of interest among the Class. The questions of law and fact

1 common to the Class predominate over questions that may affect individual Class  
2 Members. These questions of law and fact include, but are not limited to, the  
3 following:

- 4 a. Whether Defendant exercised reasonable care in testing its  
5 Formaldehyde Flooring prior to its release for commercial sale;
- 6 b. Whether Defendant's Formaldehyde Flooring is defective when  
7 used as directed, intended or in a reasonably foreseeable manner;
- 8 c. Whether feasible alternative safer formulations of the  
9 Formaldehyde Flooring were available;
- 10 d. Whether Defendant's Formaldehyde Flooring was fit for its  
11 intended purpose;
- 12 e. Whether Defendant has breached the implied warranty of fitness  
13 for a particular purpose;
- 14 f. Whether Defendant has breached the implied warranty of  
15 merchantability;
- 16 g. Whether Defendant has acted negligently;
- 17 h. Whether Defendant knew that the Formaldehyde Flooring were,  
18 and are, materially defective;
- 19 i. Whether Defendant omitted and concealed material facts from its  
20 communications and disclosures to Plaintiffs regarding the  
21 design defects inherent in the Formaldehyde Flooring;
- 22 j. Whether Defendant breached its express and/or implied  
23 warranties;
- 24 k. Whether Defendant is strictly liable to Plaintiffs and the class;
- 25 l. Whether Defendant failed to warn Plaintiffs and the class;
- 26 m. Whether Defendant has violated the UCL;
- 27 n. Whether Defendant has violated the CLRA;
- 28 o. Whether Defendant has received funds from Plaintiffs and class

members that it unjustly received;

- p. Whether Plaintiffs and proposed class members have been harmed and the proper measure of relief;
  - q. Whether Plaintiffs and proposed class members are entitled to an award of punitive damages, attorneys' fees and expenses against Defendant; and
  - r. Whether, as a result of Defendant's misconduct, Plaintiffs are entitled to equitable relief, and if so, the nature of such relief.

9       35. Numerosity: The Class is so numerous that the individual joinder of all  
10 members of the Class is impractical under the circumstances of this case. While the  
11 exact number of members of the Class is unknown to Plaintiffs at this time,  
12 Plaintiffs are informed and believe the Class consists of thousands of persons.  
13 Individual joinder of Members of the Class is also impracticable because the  
14 individual Members are dispersed throughout California.

15        36. Typicality: Plaintiffs' claims are typical of the claims of the members  
16 of the proposed class. Plaintiffs and all class members have been injured by the  
17 same wrongful practices of Defendant. Plaintiffs' claims arise from the same  
18 practices and conduct that give rise to the claims of all class members and are based  
19 on the same legal theories.

20       37. Adequacy: Plaintiffs will fairly and adequately represent and protect  
21 the interests of the Class in that they have no disabling conflicts of interest that  
22 would be antagonistic to those of the other members of the Class. Plaintiffs seek no  
23 relief that is antagonistic or adverse to the members of the Class and the  
24 infringement of the rights and the damages they have suffered are typical of all other  
25 Class Members. Plaintiffs have retained attorneys experienced in consumer class  
26 actions and complex litigation as counsel.

27       38. Superiority: The disposition of Plaintiffs' and proposed class  
28 members' claims in a class action will provide substantial benefits to both the

1 parties and the Court. The nature of this action and the nature of laws available to  
2 Plaintiffs and the Class make the use of the class action device a particularly  
3 efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the  
4 wrongs alleged because:

- 5 a. The individual amounts of damages involved, while not  
6 insubstantial, are such that individual actions or other individual  
7 remedies are impracticable and litigating individual actions  
8 would be too costly;
- 9 b. If each Class Member was required to file an individual lawsuit,  
10 the Defendant would necessarily gain an unconscionable  
11 advantage since they would be able to exploit and overwhelm the  
12 limited resources of each individual Class Member with vastly  
13 superior financial and legal resources;
- 14 c. The costs of individual suits could unreasonably consume the  
15 amounts that would be recovered;
- 16 d. Given the size of individual proposed class member's claims and  
17 the expense of litigating those claims, few, if any, proposed class  
18 members could afford to or would seek legal redress individually  
19 for the wrongs Defendant committed against them and absent  
20 proposed class members have no substantial interest in  
21 individually controlling the prosecution of individual actions;
- 22 e. This action will promote an orderly and expeditious  
23 administration and adjudication of the proposed class claims,  
24 economies of time, effort and resources will be fostered and  
25 uniformity of decisions will be insured; and
- 26 f. Without a class action, proposed class members will continue to  
27 suffer damages, and Defendant's violations of law will proceed  
28 without remedy while Defendant continues to reap and retain the

substantial proceeds of its wrongful conduct.

g. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

h. Proof of a common business practice or factual pattern which Plaintiffs experienced is representative of that experienced by the Class and will establish the right of each member of the Class to recover on the causes of action alleged; and

- i. Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

11       39. Plaintiffs and Class Members have all similarly suffered irreparable  
12 harm and damages as a result of Defendant's unlawful and wrongful conduct. This  
13 action will provide substantial benefits to Plaintiffs, the Class and the public  
14 because, absent this action, Plaintiffs and Class Members will continue to suffer  
15 losses, thereby allowing Defendant's violations of law to proceed without remedy  
16 and allowing Defendant to retain proceeds of its ill-gotten gains.

## **FIRST CAUSE OF ACTION**

## **Violations of the Unfair Competition Law**

**(Cal. Bus. & Prof. Code § 17200 et seq.)**

20       40. Plaintiffs and the Class incorporate by reference each and every  
21 preceding paragraph of this Complaint as if fully set forth herein.

22        41. The acts, omissions, and practices of Defendant as alleged herein  
23 constituted, and continue to constitute, unlawful and unfair business acts and  
24 practices within the meaning of Section 17200, et seq. of the California Business &  
25 Professions Code. Plaintiffs have standing to bring this action under Business &  
26 Professions Code § 17200 because they have suffered injury in fact and have lost  
27 money because of the Defendant's conduct.

28 | //

1           42. Defendant has engaged in “unlawful” business acts and practices by its  
 2 violation of the statutes and regulations, referenced above, including, but not limited  
 3 to: California Business & Professions Code section 17200, et seq.; California  
 4 Business & Professions Code section 17500, et seq.; California Civil Code section  
 5 1750, et seq.; and California common law that prohibits fraudulent concealment and  
 6 breaches of implied warranty.

7           43. Defendant has also engaged in “unfair” business acts or practices in  
 8 that the harm caused by Defendant's manufacture, sale, distribution, and or control  
 9 over its Formaldehyde Flooring outweighs the utility of such conduct and the  
 10 conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and  
 11 offensive, causes substantial injury to Plaintiffs and the Class, and provides  
 12 Defendant with an unfair competitive advantage over those companies that abide by  
 13 the law.

14          44. Defendant's actions described herein constitute fraud within the  
 15 meaning of California Business and Professions Code section 17200, et seq. in that  
 16 Defendant has failed to disclose that the Formaldehyde Flooring contains the Design  
 17 Defect. Defendant's failure to disclose the Design Defect was likely to mislead  
 18 Plaintiffs and the Class into believing that the Formaldehyde Flooring was free from  
 19 defect and safe to use.

20          45. As a result of the conduct described above, Defendant has been and  
 21 will be unjustly enriched at the expense of Plaintiffs and the Class.

22          46. The aforementioned unlawful or unfair business acts or practices  
 23 conducted by Defendant has been committed in the past and continues to this day.  
 24 Defendant has failed to acknowledge the wrongful nature of its actions. Defendant  
 25 has not corrected or publicly issued individual and comprehensive corrective notices  
 26 to Plaintiffs and the Class or provided full restitution and disgorgement of all ill-  
 27 gotten monies either acquired or retained by Defendant as a result thereof, thereby  
 28 depriving Plaintiffs and the Class of laminate wood flooring that does not have an

1 unreasonable risk of harm for personal injury.

2       47. Pursuant to the Business & Professions Code section 17203, Plaintiffs  
3 and the Class seek an order of this Court requiring Defendant to disgorge all ill-  
4 gotten gains and awarding Plaintiffs and the Class full restitution of all monies  
5 wrongfully acquired by Defendant by means of such “unlawful” and “unfair”  
6 conduct, plus interest and attorneys’ fees pursuant to, inter alia, California Code of  
7 Civil Procedure section 1021.5, so as to restore any and all monies to Plaintiffs and  
8 the Class and the general public, which were acquired and obtained by means of  
9 such “unlawful” and “unfair” conduct, and which ill-gotten gains are still retained  
10 by Defendant. Plaintiffs and the Class additionally request that such funds be  
11 impounded by the Court or that an asset freeze or constructive trust be imposed  
12 upon such monies by Defendant. Plaintiffs and the Class may be irreparably harmed  
13 and/or denied and effective and complete remedy if such an order is not granted.

## **SECOND CAUSE OF ACTION**

## **Violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500)**

16       48. Plaintiffs and the Class incorporate by reference each and every  
17 preceding paragraph of this Complaint as if fully set forth herein.

18        49. California Business & Professions Code section 17500 prohibits  
19 various deceptive practices in connection with the dissemination in any manner of  
20 representations that are likely to deceive members of the public to purchase products  
21 such as the Formaldehyde Flooring.

22        50. Defendant caused advertisements for Formaldehyde Flooring to be  
23 placed on its website and on product packaging, among other sources, before the  
24 general public and knew or should have known that Formaldehyde Flooring did not  
25 conform to the advertisements' representations regarding the safety of the product.

26       51. As a result of the foregoing, Plaintiffs, and other Class members, and  
27 consumers are entitled to injunctive and equitable relief and damages in an amount  
28 to be proven at trial.

**THIRD CAUSE OF ACTION**

**Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750)**

52. Plaintiffs and the Class incorporate by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

53. This cause of action arises under the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750 et seq. Plaintiffs are consumers as defined by California Civil Code section 1761(d). Defendant’s Formaldehyde Flooring constitutes “goods” as defined by California Civil Code section 1761(a). At all times relevant hereto, Defendant constituted a “person” as that term is defined in California Civil Code section 1761(a), and Plaintiffs’ and class members’ purchases of Formaldehyde Flooring constituted “transactions,” as that term is defined in California Civil Code section 1761(b).

54. Defendant violated and continues to violate the CLRA by engaging in the following deceptive practices specifically proscribed by California Civil Code section 1770(a), in transactions with Plaintiffs and class members that were intended to result or which resulted in the sale or lease of goods or services to consumers:

- 17           a. In violation of California Civil Code section 1770(a)(5),  
18                 Defendant’s acts and practices constitute misrepresentations that  
19                 the Formaldehyde Flooring in question has characteristics,  
20                 benefits or uses which they do not have;
- 21           b. In violation of California Civil Code section § 1770(a)(7),  
22                 Defendant has misrepresented that the Formaldehyde Flooring in  
23                 question is of particular standard, quality and/or grade, when  
24                 they are of another; and
- 25           c. In violation of California Civil Code section 1770(a)(9),  
26                 Defendant advertised the Formaldehyde Flooring in question  
27                 with the intent not to sell them as advertised or represented.

28           ///

1       55. Defendant has made uniform representations that its Formaldehyde  
 2 Flooring is a high-quality product that will perform as represented. These  
 3 representations, as set forth above, were false, deceptive, and/or misleading and in  
 4 violation of the CLRA.

5       56. Pursuant to California Civil Code section 1782, Plaintiffs will notify  
 6 Defendant in writing by certified mail of the particular violations of California Civil  
 7 Code section 1770 alleged herein, and have demanded that Defendant rectify the  
 8 problems associated with the actions detailed above and give notice to all affected  
 9 consumers of its intent to so act. Plaintiffs sent this notice by certified mail, return  
 10 receipt requested, to Defendant's principal place of business.

11       57. If Defendant fails to rectify or agree to rectify the problems associated  
 12 with the actions detailed above and give notice to all affected consumers within 30  
 13 days after receipt of the California Civil Code section 1782 notice, Plaintiffs will  
 14 seek actual damages and punitive damages for violation of the Act. In addition,  
 15 pursuant to California Civil Code section 1780(a)(2), Plaintiffs will be entitled to,  
 16 and therefore seek, a Court order enjoining the above-described wrongful acts and  
 17 practices that violate California Civil Code section 1770.

18       58. Plaintiffs and the class will also be entitled to recover attorneys' fees,  
 19 costs, expenses and disbursements pursuant to California Civil Code sections 1780  
 20 and 1781.

## 21                          **FOURTH CAUSE OF ACTION**

### 22                          **Fraudulent Concealment**

23       59. Plaintiffs and the Class incorporate by reference each and every  
 24 preceding paragraph of this Complaint as if fully set forth herein.

25       60. Defendant advertised and/or marketed its Formaldehyde Flooring to be  
 26 safe, of good quality free from defects, and that they would perform in their  
 27 reasonably expected operation and/or use for their full useful lives. Defendant  
 28 failed to disclose that its Formaldehyde Flooring contained a Design Defect, as

1 described above, and that the Design Defect posed a serious risk of personal injury.  
 2 These facts were not known to Plaintiffs and the Class.

3       61. Alternatively, Defendant intentionally failed to disclose the fact that its  
 4 Formaldehyde Flooring contained a Design Defect, a fact that was only known to  
 5 Defendant, and Plaintiffs and the Class could not have discovered it. Plaintiffs are  
 6 informed and thereon believe that Defendant knew of the Design Defect from its  
 7 performance of standard testing prior to placing the Formaldehyde Flooring into the  
 8 stream of commerce.

9       62. Plaintiffs and the Class reasonably relied and continue to rely upon  
 10 Defendant to sell laminate wood flooring without a Design Defect that causes an  
 11 unreasonable risk of harm. Defendant knew or ought to have known that Plaintiffs  
 12 and the Class relied and/or continues to rely upon Defendant to sell laminate wood  
 13 flooring in which the entire lifetime of the goods could be fully used without an  
 14 unreasonable risk of harm. Defendant's knowledge that its Formaldehyde Flooring  
 15 contains a Design Defect combined with Defendant's knowledge that Plaintiffs and  
 16 the Class relied or relies upon Defendant to communicate the true state of facts  
 17 relating to its Formaldehyde Flooring creates a legal obligation on Defendant's part  
 18 to disclose to Plaintiffs and the Class these facts. Defendant is in a superior position  
 19 to know the truth about, and the nature of, the Formaldehyde Flooring.

20       63. Defendant intended and intends to deceive Plaintiffs and the Class by  
 21 failing to disclose that the Formaldehyde Flooring contains a Design Defect and is  
 22 likely to fail in advance of their reasonably expected useful life inasmuch as it  
 23 causes an unreasonable risk of harm to consumers.

24       64. Defendant's failure to disclose the Design Defect and risk of harm was  
 25 material. Plaintiffs and the Class would not have purchased the Formaldehyde  
 26 Flooring had they known of the Design Defect and risk of harm, which is  
 27 significant, recognizable, real, and demonstrable. Moreover, this same Design  
 28 Defect, if not remedied, can result in catastrophic personal injury.

1       65. Plaintiffs and the Class were harmed. As a proximate result of  
2 Defendant's conduct as set forth in this cause of action, Plaintiffs and the Class will  
3 now be required to remedy the Design Defect, described above, so as to avoid the  
4 distinct likelihood that they may suffer personal injury as a result of such Design  
5 Defect. In addition, Plaintiffs and the Class members have suffered damages, which  
6 include, but are not limited to the cost to repair the Design Defect.

7 66. Defendant's concealment was a substantial factor in causing that harm.

8       67. The wrongful conduct of Defendant, as alleged herein, was willful,  
9 oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious,  
10 and/or in conscious disregard for the wellbeing of Plaintiffs and the Class along with  
11 other members of the public that may be personally injured by the excessive levels  
12 of Formaldehyde gas emitted from the Formaldehyde Flooring. Defendant intended  
13 to cause injury to the Plaintiffs and the Class placing profits over safety. Defendant  
14 engaged and continues to engage in despicable conduct with a willful and conscious  
15 disregard of the rights or safety of others. Defendant subjected, and continues to  
16 subject, Plaintiffs and the Class to cruel and unjust hardship. Accordingly, Plaintiffs  
17 and Class members are entitled to an award of punitive damages against Defendant  
18 in an amount to deter it from similar conduct in the future.

## **FIFTH CAUSE OF ACTION**

### **Breach of Implied Warranty**

21       68. Plaintiffs and the Class incorporate by reference each and every  
22 preceding paragraph of this Complaint as if fully set forth herein.

23        69. By placing its Formaldehyde Flooring in the stream of commerce,  
24 Defendant impliedly warranted that its Formaldehyde Flooring was reasonably safe  
25 for its intended use, i.e., to provide flooring without exposing consumers to excess  
26 levels of formaldehyde gas.

70. Defendant's Formaldehyde Flooring is not merchantable. In breach of  
the implied warranty of merchantability, Defendant's Formaldehyde Flooring fails

**1** emits unlawful amounts of Formaldehyde gas.

2       71. Defendant's Formaldehyde Flooring was not reasonably safe for its  
3 intended use when it left Defendant's control and entered the market.

4        72. The Formaldehyde Flooring defects were not open and/or obvious to  
5 consumers.

6       73. Any purported limitation of the duration and scope of the implied  
7 warranty of merchantability given by Defendant is unreasonable, unconscionable  
8 and void, because Defendant knew or recklessly disregarded that the defect in the  
9 Formaldehyde Flooring existed and might not be discovered, if at all, until the  
10 Formaldehyde Flooring had been used for a period of time longer than the period of  
11 any written warranty, and Defendant willfully withheld information about the defect  
12 from purchasers of Formaldehyde Flooring. Moreover, due to the unequal  
13 bargaining power between the parties, Plaintiffs and the class members had no  
14 meaningful alternative to accepting Defendant's attempted pro forma limitation of  
15 the duration of any warranties.

16       74. As a result, Plaintiffs and proposed class members have been damaged  
17 in, inter alia, the amount they paid to purchase and replace Defendant's un-  
18 merchantable Formaldehyde Flooring, and if no safe replacement exists, in the  
19 amount they paid for their Formaldehyde Flooring.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all other individuals similarly situated, requests the following relief:

- 23 A. That the Court determine that this action may be maintained as a class  
24 action under Rule 23;

25 B. Injunctive relief prohibiting Defendant from continuing to distribute  
26 and/or sell laminate flooring products that violate the CARB standards,  
27 pursuant to California Business and Professions Code sections 17203  
28 and California Civil Code section 1780;

- 1 C. Restitution of all monies Defendant received from Plaintiffs and the  
2 class members based on its violation of California Business and  
3 Professions Code section 17200;  
4 D. Damages to be determined in at trial including actual, compensatory,  
5 and consequential damages incurred by Plaintiffs and class members;  
6 E. An award of reasonable attorneys' fees and costs;  
7 F. That the Court award such other and further relief as this Court may  
8 deem appropriate.

9 DATED: March 11, 2015

ROBERTSON & ASSOCIATES, LLP

10  
11 By:

  
12 ALEXANDER ROBERTSON, IV  
13 Attorneys for Plaintiffs

14  
15  
16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs, on behalf of themselves and all others similarly situated, hereby  
18 requests a jury trial on the claims so triable.

19 DATED: March 11, 2015

ROBERTSON & ASSOCIATES, LLP

20  
21 By:

  
22 ALEXANDER ROBERTSON, IV  
23 Attorneys for Plaintiffs